THE HONOURABLE SRI JUSTICE V. ESWARAIAH

WRIT PETITION No.2233 OF 2006

Dated: 07-02-2006

Between

P. Srilatha, W/o. P. Vipranarayana,

Occ: Housewife, R/o. LIG-38, BHEL,

Ramachandrapuram, Hyderabad.

...PETITIONER

AND

The Joint Collector, Hyderabad District,

Hyderabad and another.

...RESPONDENTS

ORDER:

Heard the learned counsel appearing for the petitioner,
the learned Government Pleader appearing for the first respondent and the learned Standing Counsel appearing for the second respondent.

Learned counsel for the petitioner submits that the property bearing municipal No.4-2-123 to 125 over an extent of land admeasuring 108 Sq. yards originally belonged to one Govind Rao Neemkar who sold it to M/s. Laxmi Bai and Urmila Bai under registered sale deed dated 22.01.1959. After the death of Laxmibai and Urmilabai their legal heirs Satyanarayana and Vipranarayana became the absolute owners of the property. Vipranarayana is the son of Satyanarayana and husband of the petitioner. After the death of Satyanarayana, his son

Vipranarayana, being the sole legal heir became the absolute owner of the property. Thereafter, Vipranarayana gifted the said property to his wife, the petitioner, vide Gift Settlement Deed dated 10.08.2005 read with Rectification Deed dated 01.09.2005.

Learned counsel for the petitioner further submits that the petitioner with an intention to construct a new house in the said property submitted an application before the Joint Collector – first respondent seeking 'no objection certificate' (NOC). Pursuant to the said application the first respondent, after getting necessary report from the Mandal Revenue Officer, Nampally vide letter dated 26.11.2005, made an endorsement No.N1/9301/2005 dated 31.12.2005 informing the Commissioner, Municipal Corporation of Hyderabad (MCH) that the request of the petitioner for NOC is examined and the said land is not classified as Government land and the NOC was issued for the land only to the extent of 64 Sq. meters for the purpose of considering sanction of building plan by the MCH.

Learned counsel for the petitioner further submits that petitioner applied for NOC in respect of 90.29 sq. meters equivalent to
108 sq. yards and therefore, there is no justification in granting NOC for 64 sq. meters only. Admittedly, the said land is not a Government land as per the endorsement. He further submits that when the petitioner is in possession and enjoyment of 108 sq. yards, she is entitled for NOC for construction over the entire 108 sq. yards in accordance with the provisions of the Hyderabad Municipal Corporations Act, Byelaws and regulations made thereunder.
He further submits that the petitioner also filed another representation before Joint Collector on 12.01.2006 seeking NOC over the entire extent of 90.29 sq. meters or 108 sq. yards so as to enable her to apply for building permission for construction of a building over the said land.

Learned counsel for the petitioner relied upon a judgment of this Court in **HYDERABAD POTTERIES PRIVATE LIMITED v. COLLECTOR, HYDERABAD** rendered by his Lordship, the Honourable Sri Justice B. Sudershan Reddy, which was upheld by a Division Bench of this Court and also the Apex Court and is still an authority on the issue in question as to whether the Commissioner, Municipal Corporation, is bound by the NOC issued by the Joint Collector or consider independently.

It has been held in the said judgment that the Commissioner has to consider the objections, if any, raised for grant of permission. But, an objection raised by a member of the Committee itself would not be enough to reject the application for grant of permission.

The Commissioner is required to make pragmatic assessment of the material available on record and decide the question of *prima facie* title and lawful possession of the applicants. The applications for grant of permission cannot be rejected solely on the basis of TSLR entries. After all, the decision to grant permission itself would not confer any title upon the applicant, nor it would take away the rights of the objector(s), whether the Government or any individual, for asserting their right, title and interest in the land in respect of which permission has been granted and dispute the title in any manner known to law. Similarly, the Commissioner is not entitled to decide any disputed questions of title or the ownership. All that the Commissioner required to be is to find out *prima facie* title and lawful possession of the applicant and obviously such consideration is confined to only for the purposes of granting permission and nothing more.

Following the aforesaid judgment the second respondent/Commissioner, Municipal Corporation of Hyderabad is directed to consider the application of the petitioner for grant of building permission as and when filed by the petitioner, in accordance with the aforesaid judgment. The Commissioner shall not reject the application of the petitioner solely on the basis of the endorsement made by the first respondent/Joint Collector for construction of building over the land in an extent of 64 sq. meters only but shall take into consideration *prima facie* title and lawful possession of the petitioner in respect of 90.29 sq. meters basing on the relevant material produced by the petitioner. The Commissioner shall not reject the application of the petitioner for grant of building permission solely on the basis of the entries stated to have been made in TSLR.

With the aforesaid observations the writ petition is accordingly disposed of. No costs.

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V. ESWARAIAH, J

February 7, 2006

DSK